

PUBLIC HEARING  
COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.

DATE: Thursday, February 24, 2000

PLACE: Commission on State Mandates  
State Capitol, Room 126  
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: DANIEL P. FELDHAUS  
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair  
Representative for B. TIMOTHY GAGE  
Director  
State Department of Finance

ALBERT P. "AL" BELTRAMI  
Public Member

MICHAEL FOULKES  
Representative for KATHLEEN CONNELL  
State Controller

MILLICENT GOMES  
Representative for LORETTA LYNCH  
Director  
State Office of Planning and Research

WILLIAM SHERWOOD, Vice Chair  
Representative for PHILIP ANGELIDES  
State Treasurer

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAT HART JORGENSEN, Chief Counsel

DAVID SCRIBNER, Staff Counsel

PUBLIC TESTIMONY

Appearing Re Item 5:

For County of San Bernardino:

MARCIA C. FAULKNER  
Manager, Reimbursable Projects  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018

PUBLIC TESTIMONY

Appearing Re Item 5: continued

For City of Loma Linda:

MIKE HATFIELD  
Division Chief  
Department of Public Safety  
City of Loma Linda

For California State Association of Counties:

ALLAN P. BURDICK, Director  
California State Association of Counties  
SB 90 Service  
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Sacramento, CA 95841

For Mandated Cost Systems, Inc.:

PAUL C. MINNEY  
Girard & Vinson  
Attorneys at Law  
1676 North California Boulevard, Suite 450  
Walnut Creek, CA 94596

For Governor's Office of Emergency Services:

BOB McKECHNIE

For California Department of Finance:

JAMES LOMBARD  
State of California  
Department of Finance  
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Sacramento, CA 95814

For the Office of the Attorney General:

GEOFFREY GRAYBILL  
Office of the Attorney General  
Department of Justice  
1300 I Street  
Sacramento, CA 95814

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36	4	Change Peter Shazma to Schaafsma

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BE IT REMEMBERED that on Thursday, February 24, 2000, commencing at the hour of 9:33 a.m., thereof, at the State Capitol, Room 126, Sacramento, California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following proceedings were held:

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CHAIR PORINI: Good morning. We'll go ahead and call to order the Commission on State Mandates.

May I have roll call?

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Here.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Here.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Here.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Here.

MS. HIGASHI: Ms. Steinmeier left word that she would not be coming today.

And Ms. Porini?

CHAIR PORINI: Here.

All right, we have a quorum.

Our first item of business then?

MS. HIGASHI: Approval of the minutes of January 27th.

CHAIR PORINI: Any questions or comments from members?

Hearing none --



MEMBER SHERWOOD: Move for approval.

MEMBER GOMES: Second.

CHAIR PORINI: We have a motion and a second.  
We'll go ahead and adopt those unanimously.

We'll move on to our next item.

MS. HIGASHI: The proposed consent calendar consists of three items. Item 2 is the test claim on "School Crimes Reporting." Item 6 is "Request for Removal from the State Mandates Apportionment System" for the "Developmentally Disabled Attorney Services" test claim. And Item 7 is Adoption of Proposed Amendment to Parameters and Guidelines for "Pupil Residency Verification and Appeals."

CHAIR PORINI: All right, Members, we have three items. Do you have any comments or questions or concerns about those items?

MEMBER BELTRAMI: I move the consent calendar.

MEMBER SHERWOOD: Second.

CHAIR PORINI: All right, we have a motion and a second.

All those had in favor, indicate with "aye."

(Chorus of "ayes.")

CHAIR PORINI: Opposed?

It passes.

MS. HIGASHI: This brings us to our test claim hearing, "Standardized Emergency Management Systems." This is Item 5. Pat Hart will be presenting this item.

MS. HART JORGENSEN: Good morning.

MEMBER BELTRAMI: Madam Chair, Items 3 and 4 were just postponed.

CHAIR PORINI: Oh.

MS. HIGASHI: I'm sorry, I forgot.

Items 3 and 4 had been postponed at the request of the claimants and interested parties.

CHAIR PORINI: All right.

MS. HART JORGENSEN: Good morning.

This item was postponed from the last month's Commission hearing. And I will review the test claim for you again.

In response to the devastation of the East Bay Hills fire, SB 1841 was enacted adding Article 9.5, entitled, "Disaster Preparedness" to the Government Code. This test claim legislation directs the Governor's Office of Emergency Services, in coordination with all interested state agencies involved in emergency response, to establish, by regulation, the Standardized Emergency Management System, which we refer to as "SEMS." This system is developed for responding to and managing emergencies and disasters involving multiple jurisdictions or multiple agencies.

The test claim legislation requires SEMS to include pre-existing systems utilized by the Office of Emergency Services as a framework for responding to and managing emergencies and disasters involving multiple jurisdictions and agencies.

The test claim legislation also requires

adopting local agencies to ensure that their response personnel maintain minimum SEMS training competencies, and requires adopting local agencies to complete an "after action" report following a declared disaster.

While the test claim legislation does not specifically require local agencies to adopt SEMS, failure to do so results in a loss of funding for specified response-related personnel costs.

The claimant's position is that the test claim legislation requires local agencies to implement a new SEMS if they wish to continue to be eligible for specified response-related personnel costs under the state disaster assistance funds. Accordingly, it is their position that SEMS imposes a new program or higher level of services upon local agencies.

The Office of Emergency Services contends that the receipt of response-related personnel costs under disaster assistance programs has always been discretionary. It is the OES's position that local agencies are not now, nor were they ever, required to implement SEMS; and that the response-related personnel funding is merely an incentive for local agencies to use SEMS.

The Office of Emergency Services adds that every program listed under the SEMS framework was part of state law prior to the enactment of the test claim legislation. Accordingly, it is their position that SEMS does not create a new program or higher level of service.

The Office of Emergency Services further maintains that staff is precluded from considering Government Code section 17513, which defines the term "costs mandated by the federal government," which includes costs incurred under a "federal coercion proviso." The Office of Emergency Services emphasizes that Government Code section 17514, which defines the term "costs mandated by the state," does not include a similar "coercion provision."

The Department of Finance contends that since it is not aware of any statute that requires a local agency to request and/or receive state disaster funds, the consequences for failing to adopt SEMS, and thereby losing specified state disaster assistant funds, does not justify a conclusion that SEMS constitutes a reimbursable state-mandated program.

The Department further maintains that statutes, which condition receipt of state funds based upon compliance with the statute, do not, on their face, constitute reimbursable state mandates. It is their position that the Commission is precluded from considering the factors set forth in Government Code section 17513, which define the term "costs mandated by the federal government" when determining whether there are costs mandated by the state.

The Department further contends that the Commission is precluded from considering factors set forth in City of Sacramento II and Hayes, since both of

these factors involve federal mandates.

The Department concludes that utilization of these factors in the analysis of an optional state program would "inappropriately expand the definition of state mandated costs."

The Legislative Analyst's Office has also submitted comments, and they maintain that there is nothing in the history of mandates law which suggests that reimbursement should be construed as constraining the ability of the state to offer fiscal incentives to local governments to operate new programs or to change policies. However, they state that they are "very mindful of the possibility of 'compulsory' voluntary programs" and in deciding the issue of whether such a program, which, on its face, appears to be optional, is state-mandated, the Commission should employ the tests suggested by the court in Sacramento II and Hayes.

In addition, we received some late filings from 18 school districts. The Commissioners have a copy on their desk. I believe there's also a public copy, which indicates their support of Option 1, as set forth in the staff analysis.

At this time would the witnesses please state their name for the record?

MS. FAULKNER: Marsha Faulkner, County of San Bernardino, with the test claimant.

MR. HATFIELD: Mike Hatfield, Division Chief with the City of Loma Linda.

MR. BURDICK: I'm Allan Burdick, director of the CSAC SB-90 Program, on behalf of California State Association of Counties.

MR. MINNEY: Paul Minney with Girard and Vincent, on behalf of Mandated Cost Systems, Incorporated.

MR. McKECHNIE: Bob McKechnie, counsel for the Office of Emergency Services.

MR. LOMBARD: Jim Lombard, Department of Finance.

CHAIR PORINI: All right.

MS. HIGASHI: Will the witnesses please raise their right hands?

(Marsha Faulkner, Mike Hatfield, Allan Burdick, Paul Minney, Bob McKechnie and Jim Lombard were duly sworn by Ms. Higashi.)

CHAIR PORINI: All right, we heard extensive testimony at our last month's hearing. So why don't we open it up for the claimants to give any kind of brief discussion of additional facts?

I know, Marcia, that you submitted an additional late filing. And then we'll go ahead to the rest of the hearing.

MS. FAULKNER: I guess I need to clarify something. Are we going to bifurcate the two issues, and handle each issue or handle both at the same time?

MS. HART JORGENSEN: I think we're not going to do that this time. That was their request the last time

we had the hearing; so I think the Commissioners want to get right into the discussion of the issues, the overall issues.

MS. FAULKNER: Great.

I'm actually prepared to be able to speak to both issues separately, so I'll just go ahead and begin with the one that deals with whether SEMS meets the definition of a new program or higher level of service.

SEMS, as you know, was enacted in '92, in response to the East Bay Hills fire, and that is the language that is actually in the bill. We've got a lot of arguments that SEMS is nothing new, that local agencies were already doing this stuff as normal operations. And that is being argued to deny this test claim; deny that it's a new program or higher level of service.

A few things of that are true. Most local agencies had systems in place already to fight fires, respond to vehicle accidents, and pull victims from the rubble after an earthquake. And true response personnel, the personnel actually out in the field, are well-trained. They can communicate with each other and communicate with their management; and many of them use the Incident Command System, the ICS, as the framework for how they did business.

But before SEMS, there was no requirement to use ICS. A local agency could develop their own system, determine what works best for their local needs and

services, and they could implement a totally different system.

Now, SEMS has four programs, that it has brought forward from before SEMS. And the local agencies, before SEMS, were free to select and use any one of those four programs or any combination. But SEMS is now requiring local agencies to incorporate all of the programs, and we see that as a brand-new requirement on local agencies.

We've also heard the argument that Senator Petris's bill was enacted for purely political reasons: To formalize the use of the programs. But we have a document where OES, Richard Anderson, says otherwise. In a document that he has, he talks about that SEMS, that the East Bay fire prompted a new law requiring major changes.

So we don't see that as just a formality or just a political maneuver. The bill actually requires the Governor's Office of Emergency Services to develop regulations by December 1st, 1993. The bill also requires the State Fire Marshal to develop an approved training course for emergency response by December 1, 1994.

And then the bill goes on to say that, "Local agencies receiving disaster money must use SEMS by December 1, '96." That does not sound like any political reason. That is so specific; it has so many details and directions. And the bottom line is, the state is still



telling local agencies how to operate.

Now, some of the major components of SEMS, in the regulations that were adopted, add a lot more detail; they have framework defined, they have components defined, they have definitions defined. We see that as definitely a mandate, telling us exactly how to do our work down at the county level. There's major components of SEMS, like the ICS, State Master Mutual Aid Agreements, the designation of operational areas, use of a satellite system, and to establish and outfit emergency operation centers -- that is new to us.

They also establish five organizational response levels: One out in the field; one at the local government level -- for example, the city or a special district or a county; and then they've added what's called an "operational area," which happens to be the boundaries of an existing -- all the county boundaries. Each county has what's considered an operational area. And in that operational area, the counties are required to help coordinate between cities, special districts, the county and cities. And even if the county is not even involved -- say, there's a disaster or fire on the boundaries of two separate cities -- then the county has to get involved and make sure SEMS is being used. They even describe this operational area, that it serves as a coordinating link between local government and the state.

Then SEMS has a lot of functions. They define

command or management in the field. They say that at the Emergency Operation Center, there's supposed to be four groups: Operations, planning and intelligence, logistics, and finance and administration. And what they do is also described in the regulations for SEMS.

So we see that SEMS is most certainly a new program or higher level of service within an existing program, for all of those reasons.

CHAIR PORINI: All right, thank you.

Next witness?

MR. HATFIELD: I'm Mike Hatfield, again, with the Loma Linda Department of Public Safety, division chief.

I'm presently in the fire service. I have been in the fire service for 25 years, starting with the Department of Agriculture, working with a couple of municipalities before I ended up with the City of Loma Linda.

I work in the capacity of Disaster Preparedness Coordinator at the City of Loma Linda, and have worked in that capacity for the past ten years.

Additionally, I am currently the chair for a management network -- emergency management network in San Bernardino County, coordinating the emergency management organization of San Bernardino County. I also am credentialed with the International Association of Emergency Managers as a certified emergency manager.

I've had some exposure -- well, considerable

exposure -- to emergency management in the State of California and have a historic perspective, from the city's point of view, that I feel will really shed a little bit of light on the issue that we're addressing here, as far as SEMS being a mandate and not just a desire.

When SEMS first came about, San Bernardino County was at the forefront of trying to adopt the intent of what was implied. We were able to select a representative from our emergency management group, Marty Higgins (phonetic), to serve on the SEMS advisory committee for training; and she has assisted in developing the approved course of instruction for SEMS, for implementation in the state.

Prior to SEMS, there had not been the workload that is contained now in implementing SEMS. I went from working out of a three-inch binder to promote emergency management, to an 8-1/2-by-11 by 2-foot box of material, to try to get across to everybody and anybody in public services to meet the intent of SEMS.

I look on it as both a benefit to have something that is going to bring us all together and sing from the same sheet of music, but also I did look at it as a burden at the time because I am a sole member in the department that addresses emergency management for the City of Loma Linda.

The City of Loma Linda, if you do not know, contains a university, Loma Linda University Medical

Center, Jerry L. Pettis Memorial Veterans Hospital, a community hospital, Kaiser Permanente Outpatient Clinic, and several other medical outpatient clinics as well. We have a population base of 22,000, with a daytime population of 70,000 because of the transient population that goes through it.

When I look at what is done in the City of Loma Linda, I thank the fact that I have SEMS to go by. But I also know it's an increased burden for myself as well as the hospitals that are trying to comply with the intent of SEMS as well.

Again, I do have a historical perspective, and I'd be more than welcome to share that, if there are any questions.

Thank you.

CHAIR PORINI: All right, thank you.

Next witness?

MR. BURDICK: Madam chair, Members, Allan Burdick on behalf of the California State Association of Counties.

I'd like to address what I think is really the real critical issue on this, as it relates to if it was determined that this is a voluntary program in local government and not a mandate, which is one of the issues before it, whether or not the so-called "carrot and stick" -- whether or not the stick is large enough to say that, in a sense, it is a mandate.

And it seems pretty clear to me that if you

reverse the roles, and this was a federal program which was sent to the state: You join our FEMS program, our Federal Emergency Management System, or lose the opportunity to vie for federal aid. I don't think it would be any question that the state would feel they had no alternative. I think that alternative is much greater than the stick that was in the unemployment insurance case, which simply said to the State of California: If you don't require your employees to have unemployment insurance benefits -- which was a substantial cost -- with the loss of some tax savings to your businesses, I think that you would find that there would probably be a much greater loss to the state in the event that they had a federal disaster and were unable to apply for federal funds.

If we look at the various languages, you look at the LAO report -- and I think that is new evidence or information and factual data, argument, whatever it may be, in a combination of all those that was presented since the last hearing; but if you look on their page 22 -- I'm not sure if that is in your binder -- their last page, and their kind of conclusion. And it says, "If it is found that the local agency or school district did not freely choose to participate in or implement the new program or higher level of service, then there is a strong likelihood that the test claim constitutes a state mandate."

And I think that that's kind of the -- you

know, I think that's really the critical issue. And as I raised last time, I think this is the first time on the city/county side, at least, that we have addressed this issue as to whether or not the Sacramento case and the Hayes case and those findings actually do apply in this particular case.

And I think that everybody it's talking about, thinks, is this a compulsory mandate -- is this a "compulsory-voluntary program"? And pretty clearly, it seems to me, that it's a compulsory-voluntary program. I mean, if you talk to cities and counties that are out there, I think everybody felt they really had no alternative. The language that was there before it, "Do you have any reasonable alternative?" You know, I would think a city council or a member of a board of supervisors would find it pretty difficult to say that they had a reasonable alternative not to comply.

And then the option is what would it do if they did not and what would be the impact? And I'm thinking of some of the cities that I drove through. I remember Santa Cruz, right after they had their major disaster in the downtown area, and looked at the impact on the businesses and thought about, you know, what would happen if these people were not eligible for aid to those businesses? You know, I'm sure they would be much more severely damaged than were it the loss of some additional tax write-off because of the unemployment insurance.

So it seems pretty clear to me that, you know,

this is a program that meets all of the discussions that the analysts that we've had in the past have said, "This clearly is a program which local government had no alternative, whether it was a mandate or not."

And I think the first two speakers have addressed that. But if, for some reason, the Commission decides that it is a mandate but it is optional, and then look at the question as to whether or not it is one of these compulsory-voluntary programs or yet a reasonable alternative, it seems to me that it's pretty clear that, from a practical standpoint, no local agency or governing body would feel that they had an alternative to tell their constituents that they are not going to have this plan to do that.

I think the last thing to remind everybody, again, is that when we look at these programs, we always have to assume that these are good programs, it's good public policy -- whatever the Legislature implements and enacts, that's their intention, to improve things and to do things. And I clearly think that was the purpose of it. We had a disaster, Senator Petris and his colleagues looked at this and said, "We need something that is better. We need an improved level of service, a higher level of service to our people when we're reporting to disasters and better communication, cooperation, better ways of doing things." And that is clearly what brought it to the attention of Senator Petris when they had this disaster and his colleagues down in the Bay Area and the

Oakland Hills, and they looked at that and saw firsthand the problems. While we had a reasonable program in place, they needed a better program. And I think that's clearly what was done.

And, you know, for all intents and purposes, I think there really isn't anything left in there that says this really is a voluntary program.

Thank you.

CHAIR PORINI: Okay, thank you.

Next witness?

MR. MINNEY: Good morning. Again, Paul Minney with Girard and Vincent on behalf of Mandated Cost System, Incorporated.

I picked up on the same term that Allan did in the revised staff analysis, the term coined by the Legislative Analyst's Office, the "compulsory-voluntary program." And that was pretty descriptive of what we have here today.

I will not reiterate what my colleagues have said or what I said in the last meeting. But I think it's persuasive to know that the local agencies did not have a free choice in deciding whether to comply with this test claim legislation for the reasons we've stated, primarily because of the political pressure. As Allan noted, it's a public policy choice that was made by the Legislature. It's a public health and safety purpose behind this test claim legislation. Local agencies have extreme political pressure from the locals and the state



to comply with this test claim legislation. There's potential legal liability for failing to comply. If we had another disaster like Oakland and the cities involved and the local agencies not involved ignored this mandate, there could be potential legal ramifications for ignoring the mandate.

There are fiscal penalties we've talked about for non-compliance, the lack of funding that will come with it.

And I think you'd be creating -- or we'd be looking at a pretty significant loophole here for creating further compulsory-voluntary programs. We're not trying to foreclose all incentive-type programs from the Legislature, but this one is pretty clearly, in combination with the money, fiscal and political and legal potential, removing the free choice of local agencies. So we would support staff's recommendation and encourage the Commission to adopt option number one for costs mandated by the state.

CHAIR PORINI: All right, next witness?

MR. McKECHNIE: Obviously we disagree with the previous witnesses in this matter. And in previous written testimony --

CHAIR PORINI: For the record, would you state your name?

MR. McKECHNIE: Bob McKechnie with OES.

And in previous written submittals and testimony provided in this continued hearing, we have

steadfastly argued that SEMS does not constitute a new program or an increased level of service; and further, that it does not present costs mandated by the state.

OES maintains, contrary to the various assertions in the revised draft analysis, that the components of SEMS were always essentially required by virtue of their inclusion in the state emergency plan. And that plan was required by statute to be put into effect by local jurisdictions prior to the test claim legislation. Whether they did so or not, really just begs the question.

The fact, really, is the purpose of SEMS, the Legislature, I believe -- contrary to the previous testimony that they wanted to create a new program to deal with existing deficiencies -- really wanted to better articulate a means of implementing that emergency plan, and that is simply what SEMS does.

We do not believe that the mere addition of an incentive to the existing program then logically means that there is a new program or an increased level in service, as the revised staff report seems to imply.

That report also points out, in its conclusion, there is a requirement to comply with SEMS organizational levels and functions. These components were, in fact, included in the pre-existing emergency plan and were to be followed by local jurisdictions, whether they were or not.

The report's conclusion goes on to say that

"nor were local agencies required to develop a course of instruction." SEMS does not require local agencies to develop a course of instruction. The various state agencies involved were required by the statute to develop that course.

Finally, the staff analysis singles out the required after-action report as evidencing a new program. While we believe such a report was contemplated by the emergency plan, even if this is not the case, this requirement is really a simple undertaking, which is insignificant in terms of time, effort and cost.

As to the mandated-cost issue, we continue to urge that the Sacramento II carrot-and-stick approach should not be applied, that it is contrary to legislative intent, as evidenced by the context of the statutory scheme the Legislature has created, interpreting and guiding implementation of Article XIII B of the State Constitution.

It is noted that the Hayes case is added to the revised staff analysis. In reality, it contributes nothing new, except it may be noted that it repeatedly uses words such as "substantial" and "non-trivial," when speaking of actual costs. The SEMS incentive or penalty is not from a continuous stream of funds from the state to local jurisdiction. We are talking about a minor portion of the total funds the state may make available in the event of a declared emergency. And if there is a federal declaration of emergency, that incentive is

reduced even further, as federal funds normally would pick up 75 percent of such costs.

The revised staff analysis seems to find further comfort in the Hayes case use of the language "a matter of true choice and truly voluntary," in that case's discussion of federal mandates. We believe that the analysis of this test claim does result in a conclusion that local jurisdictions have a true choice as to whether they wish to use SEMS, in spite of the existence of a very modest incentive and the election to use SEMS is truly voluntary.

We respectfully urge that the claim be denied.

CHAIR PORINI: All right, thank you.

Next witness?

MR. LOMBARD: Jim Lombard, Department of Finance.

I really have nothing further to add to Mr. McKechnie's testimony. Mr. Graybill from the Attorney General's Office is here to respond to Ms. Faulkner's comments that she submitted a couple days ago.

MS. HIGASHI: Mr. Graybill, we'll have to administer the oath to you.

(Geoffrey Graybill was duly sworn by Ms. Higashi.)

MR. GRAYBILL: Good morning, members of the Commission. My name is Geoffrey Graybill with the State Attorney General's Office. I've been asked by the Department of Finance to respond to the letter that was

submitted by San Bernardino County on the 22nd of this month. And that, in my opinion, is a rather startling document because it completely undercuts the position they're arguing here today.

They are claiming or acknowledging that they really need the existence of some repealed provisions of the Revenue and Taxation Code to prevail here today, and they try to bootstrap that argument that even though it was repealed, it was incorporated in Article XIII B, section 6, when that was enacted into the Constitution. It didn't even exist when section 6 was enacted into the Constitution.

So I think that analysis, which, I guess, San Bernardino, the test claimant, believes is determinative of this matter, as a matter of law, actually points completely in the opposite direction. And so the Department of Finance asked us to look at that. We've done that, and we've distributed our opinion here this morning.

So unless any members of the Commission have questions, I will leave it at that.

CHAIR PORINI: Let me ask the Members if they do have questions of any of the witness.

MEMBER BELTRAMI: Can I just start?

CHAIR PORINI: Yes, Mr. Beltrami.

MEMBER BELTRAMI: I'm still concerned about the voluntary aspect of this. The more I read this, the more concerned I've become.

Can anyone -- any of the witnesses indicate whether all 58 counties, 470-plus cities, thousands of school districts and special interests involved are not included?

CHAIR PORINI: Mr. McKechnie, do you have some numbers?

MR. McKECHNIE: I don't have any actual numbers. As far as I know, all local jurisdictions are participants. Things such as school districts, though, aren't directly involved in SEMS, except as essentially a resource. So their participation is relatively minor. And I can't see how this incentive within SEMS would affect them, really, one way or the other.

SEMS is really directed primarily to emergency-response agencies by the regulations, which is the traditional fire departments, police departments and other emergency-type service organizations. But as far as I know, everybody is participating in the state at this point.

MEMBER BELTRAMI: Mr. McKechnie, on the loss of specified response-related personnel costs, what we talking about there? Are we talking about all involved personnel or --

MR. McKECHNIE: No, we're talking about those costs which are above the normal, routine emergency services provided. So we're talking about overtime, additional staff or additional people that might be needed temporarily during an emergency by the local

agency. And as I indicated, in the event of a federal declaration, we're only talking about 25 percent of those costs because that is what the state contributes in that circumstance.

I can give an example, for the City of Roseville during the floods of a couple of years ago, had close to a half a million dollars, I believe, in overall costs that the state reimbursed them for. Their emergency-response costs they were reimbursed for was about 14,000 dollars.

MS. FAULKNER: Can I comment on that?

MEMBER BELTRAMI: And if it becomes a federally-declared disaster as well?

MR. McKECHNIE: Then they would be eligible for 75 percent of that from the federal government, so it would drop down several thousand dollars.

CHAIR PORINI: Ms. Faulkner?

MS. FAULKNER: San Bernardino has incurred a lot of costs due to damages in the last eight years. SEMS has been in place for eight years. Unfortunately, we've had eight disasters since SEMS. We don't see this as an insignificant amount of funds.

What we do see is that it's absolutely vital that we still be able to access these funds. There's a whole procedure that has to go through for the State or the President, or whoever, ends up approving the disaster-related funding.

We have an example on our most recent disaster,

the Willow Fire. The President did not declare or proclaim this to be an emergency. The Governor didn't go that far, but took -- I'm not sure what the term is, they said it was an emergency, not a disaster. And just for our backfill of the response-related personnel in the sheriff's office, they had employed -- let me back up here.

On the Willow Fire, this is actually on federal land, Bureau of Land Management land, and some of it was reimbursed by the federal government. But when we look at just how much we incurred in damages and costs from that Willow Fire for over and above and outside of the normal fire protection or sheriff's protection that is out there, we ended up filing a claim for 50,000 dollars, just because of the backfill that we had to do to man the stations while the firefighters were out helping the federal government. And the State has agreed to reimburse us 75 percent of that amount.

MEMBER BELTRAMI: Ms. Faulkner, wouldn't you have had that under the old -- what was it called -- state emergency plan?

MS. FAULKNER: Yes, yes. So we have been successful in obtaining funding for years. So this is not like this is a separate, new incentive or carrot. This is more like -- is definitely like, "We're going to take this away from you."

MEMBER BELTRAMI: Following that line of thinking, what if the Legislature had just changed the



law? Let's say they just amended the old state emergency plan and indicated that certain personnel costs were no longer eligible for reimbursement, would you be here then today, on that basis?

MS. FAULKNER: No, because we -- in addition to them taking away our potential source of funding, they required us to do a whole lot more that we never had to do before.

MEMBER BELTRAMI: That does --

MS. FAULKNER: I'm not sure if I answered that.

MEMBER BELTRAMI: Yes.

MR. BURDICK: Mr. Beltrami, on behalf of CSAC and all the counties, we could respond to that, because I'm not sure that -- you know, the way your question was posed.

I think the issue you were saying is that, if you do not prepare a plan, you would have a reduction in your state aid. And I think many counties would view that similarly as the same way as a mandate, in terms of really having no alternative if you were going to reduce the amount of money that was available to them if they did not do something. So if that was your question --

MEMBER BELTRAMI: That wasn't my question.

MR. BURDICK: Okay.

MEMBER BELTRAMI: My question was they just reduced the amount of funding available, period.

MR. BURDICK: But, without having to do the SEMS program, just a straight loss of revenue?

MEMBER BELTRAMI: Right, they just decided that certain personnel costs were no longer going to be reimbursable by the state.

MR. BURDICK: That's a whole different can of worms, the loss of revenue issue, as to whether or not they would take that on. If you didn't have to do anything at all, they just took it away from you, and it's just a revenue loss issue, I think it would be -- we have to analyze that carefully. But that's a much different situation.

You don't have to do anything or are required to do something to comply. And I think as they did point out, every county has probably responded to the SEMS program and has participated, taken on a lot of activities, done training, attended meetings and so forth. And if you even just look at the one-time costs of getting ready and preparing, doing this and analyzing this; and you go back and say, "Did this legislation require you to expend 200 dollars," which is the minimum, I mean, it's -- I don't see how anybody could feel they really didn't have any alternative, at least to consider this and take this to their people as an alternative, as well as I think there's really no alternative.

And that, as you pointed out, it's very often, you know, you look and hope you can get the federal aid; but many times it is not declared a federal disaster. You have to go through the steps. And the state may be the only funding available to you, outside of your local

funding source. And, as you know, counties have very limited ability to provide for additional funding for these disasters.

If I can just comment quickly on the legislation, because it happened to be my legislation that he was commenting on. And back prior to '85, the language that talked about "no reasonable alternative," and why that was added to the Board of Control and the property tax. And I actually worked with that, with the legislative analyst and Mr. Peter Shazma, who Mr. Sherwood knows, and we had some cases and this came up before the Board of Control as we were looking at issues.

As I recall -- and I'm not 100 percent sure -- but I think the issue was relative to training for emergency medical technicians. And the issue, of course, now -- the question at that time was -- this was prior to whether it's public and private; and if you didn't do it, there would be a penalty. And I think, you know, we looked at that and said there really was no reasonable alternative that -- the City of Los Angeles is an example, which was, I think, the test claimant or at least one of the parties of interest -- indicated they really had no alternative fire department to get out of the -- out of that particular business.

And so we put it into the property tax cut and we put it into the Government Code and the Revenue and Tax Code section and just added that. And that was part

of building the code section as to what is a reimbursable mandate, as we had cases before the Board of Control. So it was added. And I think everybody at that time felt -- and it looks like at that time Mr. Shazma, who was working for the Legislative Analyst, it sounds like they are still being consistent, in saying, if you really have no alternative and things are still really as -- as what do they call it -- their compulsory-voluntary programs, that those really should be considered state mandates.

So I find a little bit -- I take umbrage to the fact that somebody would suggest that we would use that language to argue the opposite way. That's exactly the reason that language was put in the Revenue and Tax Code. The only reason it wasn't put back in is, as you know, when this statute was created, it was an effort to try to -- and, you know, the Legislature does not control your decisions if you're to interpret the Constitution. They just try to put in, I guess, a streamlined version, which would allow still for you people some more discretion on that particular issue.

CHAIR PORINI: All right, thank you.

Ms. Faulkner?

MS. FAULKNER: If I could add, to clarify; Commissioner Beltrami's question was about what if the state actually came along and totally eliminated -- they were no longer going to pay for personnel costs. I see that as a totally different scenario because that would

apply to all counties, all local agencies.

But what SEMS is doing and what this voluntary-compulsory program is doing, is singling out and targeting individual counties. Now, the reality is, usually when there's a disaster, it's not only within one county. For example, earthquakes happen in L.A. County and San Bernardino County. And if they happen to hit right on the border between the two counties and both counties had extensive costs due to the earthquake damage, and let's say L.A. County did not implement SEMS, would it be practical, reasonable or even conscionable to deny L.A. County assistance for all of their assistance to the citizens?

CHAIR PORINI: All right, Members, any other questions?

Yes, Mr. Foulkes?

MEMBER FOULKES: Well, I didn't really have a question, but it was more of a comment on this. And, again, I appreciate the testimony of the witnesses.

And I think one thing that's definitely true, and I think we've heard asked over and over again, that SEMS is a good program. And the Controller believes it's an excellent program and it has done a lot of good for the state. But, obviously, that's not the issue. It's not whether it's a good program, but it's whether it's a mandate.

And it's interesting to hear the testimony from both sides because I think, you know, in my prior life,

when I represented the legislation side on the Seismic Safety Commission, this was a huge issue because, from their standpoint, SEMS wasn't a mandate. It wasn't -- you know, the Legislature hadn't put it forward, it wasn't doing all it should be doing, so it's been, you know, for the last seven or eight years a big high priority to get passed in the Legislature as a mandate, and they've not been able to do that. So it's just interesting, you know, to see the difference of opinion on this Commission.

Again, I think, you know, really what's important is whether this meets that threshold. And, again, I think the staff has done an excellent job in the write-up, both the last month and this month. I think in this case, from the Controller's opinion, is that it doesn't meet that threshold. And although, again, it's an excellent program, we can't let that cloud the fact of the legal basis that has to be met here.

So while I appreciate all the testimony and the Attorney General's Office's quick response on that San Bernardino issue, I don't know that we necessarily have reached that threshold today. The testimony is to the contrary.

CHAIR PORINI: Any other comments or questions?

Mr. Sherwood?

MEMBER SHERWOOD: I would have to agree with Mr. Foulkes, I think I stated at the last hearing, quite frankly. So I would just like to, frankly, second

Mr. Foulkes on that issue.

CHAIR PORINI: All right.

Do I have a motion?

MEMBER GOMES: After sitting through the testimony last month and this month as well, I happen to agree with Mr. Foulkes and Mr. Sherwood as well, and would like to make the motion to adopt option two, that we are finding no cost mandated by the state.

CHAIR PORINI: All right, do I have a second?

MEMBER SHERWOOD: Second.

CHAIR PORINI: All right, we have a motion and a second.

May I have roll call?

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: I'm really torn. I'll vote aye.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Aye.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Aye.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Aye.

MS. HIGASHI: Ms. Porini?

CHAIR PORINI: Aye.

MS. HIGASHI: The motion carries.

CHAIR PORINI: Thank you very much.

All right, that moves us along to our next item.

MS. HIGASHI: We're now up to items 8 and 9. They are both adoption of proposed rulemaking orders. Item 8 will be presented by David Scribner and item 9 will be presented by Pat Hart.

CHAIR PORINI: All right.

MR. SCRIBNER: Good morning. It's regulation time. Section 1189.2 of the Commission's regulations requires the adoption of a commission order to initiate rulemaking. Following adoption of the order, staff will publish a notice of hearing and mail the notice of rulemaking package to all interested persons. Before the commission acts upon the rulemaking, there will be a public comment period that includes a public hearing.

Each year the Assembly Committee on Local Governments sponsors a bill that contains numerous revisions to the statutes governing local agencies. This year's bill, the Local Governmental Omnibus Act of 1999, also known as AB 1679, effective January 1, 2000, made the following changes to the mandate reimbursement process:

It changes the definition of "test claim" to include claims joined or consolidated with the first claim filed.

It extends the time for consolidating test claims and designating a lead claimant from 30 to 90 days from the initial filing.

It requires that the Commission, absent an agreement by the claimants to designate a lead claimant,



to designate the first filing as a lead claimant when there are multiple claims filed by the same statute or executive order.

It codifies the Commission's regulations which imposes a ten-day time line to determine whether an incorrect reduction claim or "IRC" is complete and allows the claimants 30 days from the date of the notice that an IRC is deemed incomplete to file a completed IRC.

It provides the State Controller with 90 days to respond to IRCs and specifies the State Controller's failure to file a rebuttal shall not delay the Commission's consideration of an IRC.

It reduces the time in which the Commission may order reconsideration of all or part of any test claim or any IRC from 90 to 30 days after the effective date of service of the statement of decision as specified.

It clarifies that reimbursement claims shall be filed in a matter proscribed in the adopted Parameters and Guidelines, and expands the Commission's jurisdiction to review and direct modification of the claiming instructions.

The staff's draft of the proposed text is attached as Exhibit B in your binders.

The proposed action is necessary to interpret, implement and make specific AB 1679; and, in addition, staff proposes minor modifying -- or clarifying and consistency edits, as well.

The following timetable, if the Commission

adopts the order, the staff will proceed pursuant to the following:

- February 25th, we will send out a notice of proposed regulatory action.
- July 27th, the public hearing will be heard, or will be held.
- September 28th, regulations will be proposed for adoption by the Commission.
- And hopefully, October 27th, adopted regulations will be filed with OAL.

Staff recommends that pursuant to California Code of Regulations, Title 2, Section 1182, that the Commission adopt the Proposed Order 00-1 to initiate rulemaking proceedings.

CHAIR PORINI: Questions or comments by members?

Mr. Beltrami?

MEMBER BELTRAMI: Madam Chairman, this takes eight months. Can't it be done faster than that --

CHAIR PORINI: Pat?

MEMBER BELTRAMI: -- and still meet all the legal --

MS. HART JORGENSEN: What this is, is it's a schedule that we give to the Office of Administrative Law. We have four packages. We are going to be doing some clean-up. We wanted -- in fact, one thing that wasn't mentioned, we wanted to meet with the interested parties after, to set up a time for rulemaking, so that

we can have -- we set this out as a first draft, both of these packages.

We can do it earlier. But as I looked at what happened last year, when they had their conformity regulations, it took about eight months before everything was worked out and before it was approved. So I wanted to make sure we had plenty of time there.

Again, if we had the package ready earlier, that would be great; and we could always move up the hearing, so we are not wedded to these dates but I wanted to get something realistic. We also wanted to take a chance, since so many chapters of the regulations are open, that we could make some clarifying edits and maybe make our regulations a little more user-friendly.

MEMBER BELTRAMI: Because you don't see these as being particularly controversy?

MS. HART JORGENSEN: At this point we don't, but, again, we wanted to get started with the rulemaking process. We haven't heard from the interested parties yet and we wanted to make sure that they know that we will be meeting with them and this is to be considered the first draft on both of these.

MS. HIGASHI: Let me just add, you may recall we have traditionally held a rulemaking workshop with parties to have another go at this line by line and to get further input. And this typically occurs before the final date for filing of comments, and then that helps staff as well. And then the next draft that comes back

would reflect those changes.

CHAIR PORINI: All right, any other questions or comments?

Yes, Mr. Foulkes?

MEMBER FOULKES: Just a comment to that.

Looking at this from a legislative perspective, I think that we're happy to move this forward and we're happy to work with the parties last year, the claimants, both last year and the year before, on a whole series of legislative changes, which we believe the intent is to make life easier for the claimants, speed up the process, et cetera, and look forward to working with them on the regulations.

But we also hope that at some point, we need to take a breather; that we can't keep having the moving line where every year the rules change and every year the process changes. And so we hope that this will -- that both last year's bill and this year's bill have streamlined that process and I hope that we see it as working and see how the process works before we decide to throw this off and change everything else again. Because it causes a tremendous workload in the Controller's office. But also, I think, it's very frustrating to keep having to shift rules midstream, especially when you have an eight-month regulatory process, which would not be finished before this legislative process is over. So we're hoping that this would be a quiet year in the legislative front.

CHAIR PORINI: Thank you. Excellent point.

All right.

MEMBER SHERWOOD: Move for approval.

MEMBER GOMES: Second.

CHAIR PORINI: I have a motion and a second.

May I have roll call?

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Aye.

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Aye.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Aye.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Aye.

MS. HIGASHI: And Ms. Porini?

CHAIR PORINI: Aye.

MS. HIGASHI: Thank you.

CHAIR PORINI: That takes us to item number 9.

MS. HART JORGENSEN: As David explained, section 1189.2 of the Commission's regulations require the adoption of a commission order to initiate rulemaking. This proposed order, Number 00-2, provides for dealing with dismissal of actions which are postponed or placed on an inactive status by the party or the claimant.

The Commission's current regulations provide procedures for parties to withdraw test claims, incorrect reduction claims and applications for findings of

significant financial distress, requests to review the Controller's claiming instructions, amendments to parameters and guidelines. However, the Commission's regulations do not provide any procedures for the Commission to dismiss a pending action under circumstances where a claimant or a party has, in effect, withdrawn its claim or request by failing to reactivate the claim within one year after its request for postponement or placement on an inactive status was granted.

The proposed regulations, which are attached as Exhibit B, add sections 1183.09, 1183.21, and 1188.31 to the Commission's regulations to provide for dismissals of a pending action, which is either postponed or placed on an inactive status at the request of a party or claimant, which is not reactivated within one year from the date of the postponement or placement on an inactive status.

In order to effectuate dismissal, the Commission must do so in a hearing conducted in accordance with Article 7 of the Commission's regulations.

The proposed regulations also provide that notice of the hearing to dismiss shall be made within 60 days of the scheduled hearing and also provides that the parties may file written comments on the proposed action, and they must be submitted within 45 days after receipt of the notice.

The following timetable is how the staff hopes

to proceed if the Commission adopts this rulemaking order:

- February 25th, notice of proposed regulatory action will be issued and published.
- June 29th, the public hearing will be held.
- August 24th, regulations will be proposed for adoption by the Commission.
- September 29th, adopted regulations will be filed with the Office of Administrative Law.

And as we explained earlier, we need to get dates to the Office of Administrative Law.

This is trying to get a guideline. Again, I looked at everything in the past to see what the average time was for a rulemaking package to go through, and I wanted to make sure we had plenty of time and didn't cut ourselves off.

CHAIR PORINI: All right, questions or comments from members?

MEMBER BELTRAMI: Move approval.

MEMBER SHERWOOD: Second.

CHAIR PORINI: We have a motion and a second.

May I have roll call?

MS. HIGASHI: Ms. Gomes?

MEMBER GOMES: Aye.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Aye.

MS. HIGASHI: Mr. Beltrami?

MEMBER BELTRAMI: Yes.

MS. HIGASHI: Mr. Foulkes?

MEMBER FOULKES: Aye.

MS. HIGASHI: And Ms. Porini?

CHAIR PORINI: Yes.

All right, that takes us to our Executive Director's report.

MS. HIGASHI: In your binders, you have the Executive Director's report, which consists of an overview of the workload, also a detailed listing of the workload, and also an enumeration of the inactive test claims.

Last month, the request had been made that we provide you with this information. We are in the process of contacting the claimants whose claims are listed below and making arrangements to activate them or putting them before you for dismissal.

Yesterday -- are there any questions regarding this list?

CHAIR PORINI: No.

MS. HIGASHI: Yesterday the Commission's budget was approved on consent calendar in the Senate Budget Committee, and the Assembly has not yet set it for hearing.

The local claims bill has been drafted by Leg. Counsel. However, it has not yet been introduced, so we'll be proofing that bill before it goes in.

I'm not aware yet of any legislation that has bill members that's sponsored by CSAC. I believe



language has been put in that has come back from Leg. Counsel, but no introductions have occurred yet.

On our rulemaking, we're happy to note that the "tie vote" regulations have been in effect since our last hearing. We didn't know until we got back to the office.

CHAIR PORINI: Okay.

MS. HIGASHI: So there's a copy of them here. Once they're in print in Barkley's, we'll be giving you updated copies of that.

You have a copy of the complete rulemaking calendar here also, that's Exhibit C.

And I also wanted to note that the lease for our new offices has been signed, and the Commission is projected to move on May 1.

CHAIR PORINI: Great.

MS. HIGASHI: So we're all looking forward to that, so we are in the midst of meetings with the new landlords and contractors to set up that schedule, and we're hopeful. I saw a rough of the schedule yesterday and we're hopeful.

CHAIR PORINI: All right, and your new location will be?

MS. HIGASHI: Once again, it will be 980 Ninth Street, Suite 300. It's the U.S. Bank Plaza building. And there's a Starbucks next door and a La Bou next door, so we're happy about that, as well as the main public library.

MEMBER GOMES: And Lemon Grass.

MS. HIGASHI: It's not Lemon Grass.

MEMBER GOMES: Oh, it's not?

MEMBER BELTRAMI: There's parking there, Paula?

MS. HIGASHI: There is a parking garage. If you arrive early, it's ten dollars a day.

CHAIR PORINI: Okay.

MS. HIGASHI: But there is street parking, metered parking and the City lots are close, as well.

The proposed agenda for next month includes two test claims, school site councils and involuntary transfers; proposed statements of decision from this hearing; and also we have tentatively scheduled "school crimes reporting" IRCs.

We also will be receiving a status report on the special education parameters and guidelines, and we hope to have before you five statewide cost estimates for adoption.

CHAIR PORINI: All right.

MS. HIGASHI: Are there any questions?

MEMBER BELTRAMI: Madam Chair, may I just ask, what's happened on getting a report back on the negotiations with the school districts?

MS. HIGASHI: Mr. Scribner just sent a letter out to the parties, reminding them that they should be making an update report.

MEMBER BELTRAMI: Thank you.

MS. HIGASHI: We have tentatively listed the P's and G's on the agenda as an adoption, but we expect

that it would just change to a report.

CHAIR PORINI: I can just say, informally, that I note that there have been numerous meetings and discussions.

MEMBER BELTRAMI: Yes.

MS. BERG: Madam Chair, if I may, the group intends to have a report submitted to staff by the 15th of March.

CHAIR PORINI: Great. Thank you.

MS. HIGASHI: So this concludes my report, if there are no other questions.

CHAIR PORINI: All right.

MS. HIGASHI: And we have a closed session scheduled. And if there are no further comments --

CHAIR PORINI: Let me ask, is there anyone in the audience who wishes to make a public comment at this time?

Okay, hearing none, then we'll go ahead and we will recess into our closed session.

The Commission will now meet in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda pursuant -- and pursuant to Government Code section 11126, subdivision (a), and 17527, to confer on personnel matters listed on the published notice and agenda.

With that, we'll move into our closed session,  
and ask members of the public to leave the room, please.  
Thank you.

(The Commission met in executive closed session from  
10:34 a.m. to 10:53 a.m.)

CHAIR PORINI: All right, the Commission met in  
closed executive session pursuant to Government Code  
section 11126, subdivision (e), to confer with and  
receive advice from legal counsel for consideration and  
action, as necessary and appropriate, upon pending  
litigation listed on the published notice and agenda; and  
pursuant to Government Code section 11126, subdivision  
(a), and section 17527, to confer on personnel matters  
listed on the published notice and agenda.

Hearing no further comments, this meeting is  
adjourned.

(The hearing concluded at 10:54 a.m.)

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 7th day of March 2000.

---

DANIEL P. FELDHAUS

CSR #6949, RDR, CRR